

Board of Pardons and Parole and Department of Corrections
5 S. Last Chance Gulch - Room 4-65
Helena, MT 59620
April 27, 2011

Board members in attendance: Mike McKee, John Ward, Teresa McCann O'Connor, Darryl Dupuis, and Sam Lemaich

Board members absent: John Rex and Margaret Bowman

Board staff in attendance: Craig Thomas, Julie Thomas, Fern Osler, Brian Callarman, and Christine Slaughter.

Department of Corrections staff in attendance: Mike Ferriter, Diana Koch, Jo Acton, Mike Mahoney, Cathy Gordon, Ron Alsbury, and Myrna Omholt-Mason

Meeting summary of October 9, 2010: The summary sections were reviewed by Mr. Ferriter. No corrections to the summary were made.

BOPP and DOC Legislation: Overview by Diana Koch

HB 141 - AN ACT GENERALLY REVISING THE MAKEUP, OPERATION, AND PROCEDURES OF THE BOARD OF PARDONS AND PAROLE. Effective date of July 1, 2011

Ms. Koch discussed key points in the bill:

1. Make-up of the Board
 - a. changes the make-up of the board from three members and four auxiliary members to seven equal members. On the effective date, auxiliary members become regular members and will serve the remainder of their term as a regular member.
 - b. clarifies that board decisions regarding board policy, board procedure, or administrative rules pertaining to the board will be adopted through a majority vote of the board members. Decisions regarding parole and executive clemency will done on a majority vote by the hearing panel.
2. Hearing Panels
 - a. clarifies in both definitions and throughout parole statutes that "hearing panel" is the body that hears and decides all cases.
3. Board Chair or designee
 - a. clarifies that the board chair or designee in consultation with the members, appoints hearing panels and hearing panel presiding officers. The bill gives the board chair or designee the direction to equitably distribute workload among board members.
 - b. board chair or designee appoints a third panel member to break any two-member panel tie vote.

4. Video and phone hearings
 - a. allows the board to hold any hearing via video teleconference.
 - b. clemency hearings may be held telephonically - but only at the applicant's request.
5. Regular parole
 - a. adds criminally convicted youth who are placed at Pine Hills or Riverside as eligible for parole.
 - b. the board may order that an inmate denied parole serve up to six years before the board reconsiders them for parole.
6. Parole Hearing
 - a. psychological evaluations will be included in the material the board must consider at a parole hearing.
 - b. specifies that criminal justice authorities can submit written or oral statements to the board for consideration in a hearing.
7. Section 7; Medical parole
 - a. adds "adult community corrections facilities" to the list of places from which the board can medically parole an inmate.
 - b. gives courts 30 days to respond to a written request from the department for approval for medical parole. If, after 30 days, no response is received from the court, the person is considered to be approved by the court for medical parole.
8. Furlough
 - a. the hearing panel or board chair or designee can grant a furlough.
 - b. clarifies that an inmate on furlough is subject to escape charges if he/she doesn't report, do what they've been ordered to do, or doesn't return when ordered.
9. Executive clemency
 - a. correctional staff not do an investigation unless the board has reviewed the application for clemency and has voted to hold a hearing on the application.
10. Revocation of Parole
 - a. the supervising parole officer notify the victim before a parole revocation hearing and informs the victim that he/she can submit oral or written comment to the board about the revocation. The current statute now says the board must notify the victim.
 - b. dead time is for the courts' benefit as it attempts to clarify the language regarding dead time.

Ms. Koch will draft a MOU relative to the board member's decision not to be involved with criminally convicted youth that are committed to DOC and sentenced to either Pine Hills or Riverside.

Mr. Thomas pointed out two areas of the bill that board members and P&P officers need to be aware of. Section 14, (Section 46-23-1025, MCA) subsection (3) the bill states (new language underlined): *If the prisoner has violated a condition of release requiring the payment of restitution, the supervising parole officer shall notify the victim.*

Subsection (5) reads: *If the hearing panel determines that the prisoner has violated the provisions of release, the hearing panel shall determine the amount of time, if any, that will be counted as time served while the prisoner was in violation of the provisions of release.* Mr. Thomas believes the new language gives the board more discretion regarding "dead time" and needs to be addressed when the board's administrative rules are amended.

SB 72 - Revise contracting authority for community corrections programs

Ms. Koch said the bill gives the department authority to contract with community corrections facilities or programs or local or tribal governments and to promulgate administrative rules to expand prerelease centers.

SB 76 - Provide parole for those sentenced to custody of DPHHS and in state facility (short title)

Ms. Koch stated this bill deals with guilty but mentally ill offenders. The board may release an offender on nonmedical parole to three additional facilities: the Montana State Hospital, the Montana Developmental Center, or the Montana Mental Health Nursing Care Center.

SB 120 - Require publishing of appointed members to all state agency boards (short title) Effective date July 1, 2011

Ms. Koch told the group the following information will have to be included in any publication published by the board:

- a. the name of each board member;
- b. an address, telephone number, or e-mail address of each board member; and
- c. the term of each member, including the date that the members' term expires.

This information should also be available on the board's web site. The board will decide if they prefer to use a single mailbox for constituent correspondence or if each member will have their own post office box. Either way, the post office box information should be posted on the board's web site.

SB 423 - Generally revise laws relating to use of marijuana

Ms. Koch said new language in the proposed bill states a person may not be a registered cardholder if the person is in the custody of or under the supervision of the department, a youth court, a district court, or a court of limited jurisdiction or is ordered by a court to participate in any state, county, or local government criminal supervision or enforcement program. The question was raised if there is a retroactive applicability date. Ms. Koch will research the question and report back to the board.

BOPP Administrative Rules Revisions/ Litigation overview by Diana Koch

Ms. Koch said the following board rules will be amended in the near future: 20.25.101 (1) Organization of the Board; 20.25.202 (8) Definitions; 20.25.305 (1) Eligibility; 20.25.307 (1) Medical Parole; 20.25.401 Hearing Procedure; 20.25.402 (2) Administrative Review, Reappearance, and Early Review; 20.25.501 Decision and Reconsideration; 20.25.506 Furlough; and 20.25.702 Conditions on Supervision.

Ms. Koch also requested that any board member that is served legal litigation paperwork, to please contact her with the date and time they were served.

Department of Corrections - Budget Status - overview by Mike Ferriter

- The proposed budget agreement gives the department \$1.8 million dollars a year for creating 54 more community corrections beds, including 20 in existing prerelease centers and 34 in alternative programs and up to 120 additional secure beds.
- A portion of the \$1.8 million will be used to assist offenders unable to work because of mental health diagnoses, medical issues, or physical restrictions.
- The parenting program at MWP will be maintained using a portion of the \$1.8 million.
- The department is 5% or \$18.2 million dollars short from what was submitted to the governor's budget office. For the next biennium the department is facing a \$14.6 million dollar shortfall. The shortfall will cut 27 full-time employees, eliminate various contracts, doesn't fund expected utility costs, provides no money for 44 secure beds and 20 community corrections beds requested in the original budget, and eliminates funding for several vehicles assigned to key department staff.
- The legislature did not approve the negotiated pay raises and if a strike is called, the strike could impact board members from entering the secure facilities when parole hearings are scheduled.

Closing Comments:

Julie Thomas stressed the importance of having IPPO's and/or case managers attend parole board hearings.

Ron Alsbury invited board members to attend the ACCD Division meeting on May 2, 2011. Moving high risk offenders into the community, re-entry, and clarifying roles of IPPO's/case managers will be some of the issues discussed.

Jo Acton said that the female prison population is escalating with 193 offenders on site, 7 off site, 13 on jail hold, and 20 awaiting placement to the Assessment and Sanction Center. She said if the department is moving forward toward secure assisted living beds, some of those beds should be held for female offenders.

Mike Ferriter suggested transferring female offenders that choose to discharge their sentence as opposed to going to a prerelease center or treatment programs back to the county jail where the crime was committed to sit out their sentence.

Mike McKee expressed concern that the board members weren't part of the working group that crafted the language of SB 76. He asked that in the future, the board be included in such discussions. He also asked that he be personally notified of issues that would affect the board either by the director or the wardens at MSP or MWP.

Craig Thomas thanked everyone for all their hard work during his 30+ year tenure as Executive Director of the board.

Public comment: None